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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 758

In the Matter of

RAMON NOVARRO.

PETITION FOR WRIT OF CERTIORARI.

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RAMON NOVARRO.

PETITION FOR WRIT OF CERTIORARI.

To the Honorable Chief Justice Earl Warren and to the Justices of the Supreme Court of the United States:

Your petitioner, Ramon Novarro, respectfully petitions this honorable court for a Writ of Certiorari directed to the Supreme Court of the State of California to review and reverse its decision denying your petitioner a Writ of Habeas Corpus on October 10, 1962.

Opinion Below.

At 58 Advanced California Reports 17 on page 2 of the Minutes of the Supreme Court of the State of California is the following decision of the Supreme Court of the State of California:

"Crim 7216—In re Novarro on Habeas Corpus.

Petition for Writ of Habeas Corpus denied."

This is the entire opinion of the Supreme Court of the State of California.

Jurisdiction.

Jurisdiction is conferred by Title 28, Section 1527, United States Code, which provides as follows:

> "Final judgments or decrees rendered by the highest court of a state in which a decision could be had may be reviewed by the Supreme Court of the United States . . . (3) by Writ of Certiorari . . . where any right, privilege or immunity is specially set up or claimed under the Constitution . . . of the United States."

Constitutional Provisions.

The 14th Amendment to the Constitution of the United States guarantees to your petitioner equal protection of the laws, and his right not to be deprived of his liberty without due process of law.

Statutes of the State of California Involved.

The following Paragraphs of the Vehicle Code of the State of California, read as follows:

Section 40300: Application of Chapter.

> "The provisions of this chapter shall govern all peace officers in making arrests for violations of this code without a warrant for offenses committed in their presence, but the procedure prescribed herein shall not otherwise be exclusive of any other method prescribed by law for the arrest and prosecution of a person for an offense of like grade."

Section 40301: Procedure.

> "Except as provided in this chapter, whenever a person is arrested for any violation of this code declared to be a felony, he shall be dealt with in like manner as upon arrest for the commission of any other felony."

Section 40302: Mandatory Appearance.

"Whenever any person is arrested for any violation of this code, not declared to be a felony, the arrested person shall be taken without unnecessary delay before a magistrate within the county in which the offense charged is alleged to have been committed and who has jurisdiction of the offense and is nearest or most accessible with reference to the place where the arrest is made in any of the following cases:

"(a) When the person arrested fails to exhibit his driver's license or other satisfactory evidence of his identity.

(b) When the person arrested refuses to give his written promise to appear in court.

(c) When the person arrested demands an immediate appearance before a magistrate.

(d) When the person arrested is charged with violating Section 20001, 23102, 23105 or 23106."

Section 40306: Misdemeanor Procedure before Magistrate.

"(a) Whenever a person is arrested for a misdemeanor and is taken before a Magistrate, *the arresting officer shall file with the Magistrate a complaint stating the offense with which the person is charged.* (italics supplied.)

(b) The person taken before a Magistrate shall be entitled to at least five days continuance of his case in which to plead and prepare for trial and the person shall not be required to plead or be tried within the five days unless he waives such time in writing or in open court.

(c) The person taken before a Magistrate shall thereupon be released from custody upon his own recognizance or upon such bail as the Magistrate may fix."

Section 40307: Magistrate Unavailable.

"(a) When an arresting officer attempts to take a person arrested for a misdemeanor violation of this code before a magistrate and the magistrate or person authorized to act for him is not available, the arresting officer shall take the person arrested before the clerk of the magistrate or the officer in charge of the most accessible county jail, city jail, or other place of detention within the county, who shall admit him to bail in accordance with a schedule, fixed as provided in Section 1269 (b) of the Penal Code."

Section 15 "SHALL" and "MAY"

" 'Shall' is mandatory and 'may' is permissive."

Section 23102: Misdemeanor Drunk Driving.

"(a) It is unlawful for any person who is under the influence of intoxicating liquor, or under the combined influence of intoxicating liquor and any drug, to drive a vehicle upon any highway. Any person convicted under this section shall be punished upon a first conviction by imprisonment in the County Jail for not less than thirty days nor more than six months, or by fine of not less than Two Hundred Fifty Dollars ($250.00) nor more than Five Hundred Dollars ($500.00) or by both such fine and imprisonment, and upon a second or any subsequent conviction by imprisonment in the County Jail for not less than five days nor

more than one year and by a fine of not less than Two Hundred Fifty Dollars ($250.00) nor more than One Thousand Dollars ($1,000.00). A conviction under this section shall be deemed a second conviction if the person has previously been convicted of a violation of Section 23101 of this Code.

(b) Any person convicted of a second or subsequent offense under this section shall not be granted probation by the court, nor shall the court suspend the execution of the sentence imposed upon such person."

Section 23101: Felony Drunk Driving.

"Any person who, while under the influence of intoxicating liquor drives a vehicle and when so driving does any act forbidden by law or neglects any duty imposed by law in the driving of such vehicle, which act or neglect proximately causes bodily injury to any person other than himself is guilty of a felony and upon conviction thereof shall be punished by imprisonment in the State Prison for not less than one year nor more than five years, or in the County Jail for not less than ninety days nor more than one year and by fine of not less than Two Hundred Fifty Dollars ($250.00) nor more than Five Thousand Dollars ($5,000.00)."

The Penal Code of the State of California, Part 2, Title 2, Section 740 reads as follows:

"Section 740. (Public Offenses Triable in Inferior Courts: Prosecution by Written Complaint Under Oath: Verification on Information and Belief.) *Except as otherwise provided by law,* (italice supplied) all 'public offenses triable in the in-

ferior courts must be prosecuted by written complaint under oath and subscribed by the complainant. Such complaint may be verified on information and belief."

Questions Presented by This Petition.

1. Whether due process under the Fourteenth Amendment to the Constitution of the United States requires that the defendant in a criminal action shall have an opportunity to prove either at or before his trial that the appropriate criminal procedure established by the State Legislature has not been followed and that by reason thereof, the trial court lacks jurisdiction over him.

(a) Whether non-compliance with a mandatory requirement of a Statute of a State by the officers of that State, or a subdivision thereof, is non-compliance with due process under the Fourteenth Amendment of the Constitution of the United States.

2. Whether the equal protection of the laws promised to all citizens of the United States under the Fourteenth Amendment to the Constitution of the United States requires that all defendants in criminal proceedings be treated equally under the law without regard to whether a magistrate is immediately available at the time of arrest, or whether or not the defendant has been released on bail, or is kept in jail until a magistrate is available.

(a) Whether or not the trial court has jurisdiction to try a defendant arrested for an alleged violation of Section 23102 of the Vehicle Code of the State of California when the complaint upon which the trial is proceeding has not been filed in compliance with the

law but has been filed on information and belief by a person other than the arresting officer as required by the statutory law of the State of California.

Statement of Facts.

On February 20, 1962, petitioner, Novarro, was arrested by police officers, R. E. Hattey and E. J. Jewell, taken to the police station in the County of Los Angeles, State of California, and charged with violation of Vehicle Code 23102. A verified complaint filed upon information and belief was later filed by one J. W. Fletcher, who was not one of the arresting officers nor a witness to the arrest. A motion to dismiss the complaint on the ground of lack of jurisdiction, because the complaint was filed on information and belief *not* by one of the arresting officers, was made before trial on March 21, 1962 and was denied on March 26, 1962 in Division 70 of the Municipal Court of Los Angeles Judicial District, in a Minute Order holding that the said court had jurisdiction of the cause and ordering the trial of the defendant, petitioner, to proceed. On March 26, 1962, the said court found the said petitioner guilty of a violation of said Vehicle Code, Section 23102(a) and continued the matter for sentencing, and did sentence the petitioner on June 26, 1962 to 15 days in the County Jail of the County of Los Angeles, State of California, plus a fine of $250.00. At the trial, the petitioner stood on his motion to dismiss for lack of jurisdiction, and the case was submitted to the Municipal Court on the arrest report.

Petitioner filed a petition for a Writ of Prohibition in the Superior Court of the State of California for the County of Los Angeles, 794977, and an amended

petition for Writ of Prohibition with the said Superior Court, which was denied, without hearing, on June 15, 1962.

Petitioner filed a petition for Writ of Prohibition with the District Court of Appeal of the State of California, 2nd Civil 26535, which petition was denied by the said court on June 25, 1962, without opinion.

Petitioner petitioned for a hearing before the Supreme Court of the State of California from a denial of the Writ of Prohibition by the District Court of Appeal. Said petition for hearing was denied by the Supreme Court of the State of California on July 25, 1962, without opinion.

An Appeal from the decision of the Municipal Court of the Los Angeles Judicial District was not filed on behalf of the Defendant Novarro until notice by the California Supreme Court of its denial on July 26, 1962; said Appeal was dismissed by the Appellate Department of the Superior Court of the State of California for Los Angeles County on its own motion on August 9, 1962, on the ground that it lacked jurisdiction since no appeal was filed within ten (10) days after sentence had been pronounced on June 26, 1962 as required by statute (While the matter was before the Supreme Court of the State of California on the Writ of Prohibition).

Petitioner then filed for a Writ of Habeas Corpus with the Superior Court of the State of California, for the County of Los Angeles which was denied by said court on August 23, 1962.

Petitioner then petitioned for a Writ of Habeas Corpus to the District Court of Appeal 2nd District.

of the State of California, which petition was denied on September 13, 1962.

Petitioner then petitioned to the Supreme Court of the State of California for Writ of Habeas Corpus which was denied by said Supreme Court on October 10, 1962.

On October 4, 1962, petitioner filed a petition for writ of Habeas Corpus with the United States District Court, Southern District of California, Central Division, and his petition was denied on the ground that his state remedies had not been exhausted; *i.e.*, that a petition for a Writ of Certiorari to review the decision of the Supreme Court of the State of California denying the Writ of Habeas Corpus had not been filed with or acted upon by the Supreme Court of the United States.

A stay of execution of the sentence of the Municipal Court of the Los Angeles Judicial District, County of Los Angeles, State of California, was granted by the said Municipal Court until October 4, 1962. A further stay of execution of the sentence was granted by the United States District Court, Southern District of California, Central Division, until such time as petitioner could petition the Supreme Court of the State of California for a stay of execution pending the filing of a petition with the Supreme Court of the United States for Writ of Certiorari, and for further stay, but not later than November 26, 1962. The petition for stay of execution was denied by the Supreme Court of the State of California, on or about November 10, 1962, and the petition for a stay of execution filed before this honorable court was denied by the Honorable Mr. Justice Douglas on November 21, 1962. Thereafter, and on November 21, 1962, the United States District

Court, Southern District of California, Central Division, ordered stay of execution of a sentence "pending the filing of petitioner's application for a Writ of Certiorari with the Supreme Court of the United States, and not later than January 9, 1963," and further ordered that such stay should continue "pending said filing and disposition of said Writ of Certiorari."

On the 31st day of August, 1962, the Appellate Department of the Superior Court in and for the County of Los Angeles, State of California in the case of *People v. Maggiora* issued the first written decision on any case involving the points of law involved in this case. A copy of said decision is attached hereto and made a part hereof by reference and is marked Exhibit 1 in appendix. The jurisdictional facts in the *Maggiora* case were the same as those in your Petitioner's case. The purpose in attaching the copy of said court decision in the *Maggiora* case was to indicate to your Honorable Court the thinking of the Courts in the State of California with reference to the subject matter of this instant proceeding. The decision itself indicates that the court is insuring unequal protection of the laws of the State of California in the following manner: If a person is arrested for drunk driving (violation of Section 23102, Vehicle Code), and is not brought before a magistrate, but is released on bail by his jailer, then he is not entitled to protection of Section 40306 of the Vehicle Code which requires that the arresting officer file the complaint.

Reasons for Granting the Writ.

(1) The United States Supreme Court is the final arbiter as to what constitutes due process of law. *State v. Schifsky*, 69 N. W. 2d 89, 243 Minn. 533; *State v. Northwest Airlines*, 322 U. S. 292.

The petitioner is entitled, under a due process of law clause of the 14th Amendment to the United States Constitution to be tried by the established rules of procedure determined by the legislature. *People v. Horiuchi*, 114 Cal. App. 415; *People v. Gilbert*, 25 Cal. 2d 422. As stated in *Garner v. Louisiana*, 7 L. Ed. 2d 207, at p. 214:

> "It is as much a denial of due process to send an accused to prison following conviction for a charge that was never made as it is to convict him upon a charge for which there is no evidence to support his conviction.
>
> "Constitutional safeguards for the protection of all who are charged with offenses are not to be disregarded in order to inflict merited punishment on some who are guilty."
>
> *Ex parte Quirin*, 63 S. Ct. 22, 87 L. Ed. 3.
>
> * * * * *
>
> "The State is free to regulate the procedure of its courts in accordance with its own conceptions of policy, unless in so doing it 'offends some principle of justice so rooted in the traditional and conscience of our people as to be ranked as fundamental.'" But "the state may not permit an accused to be hurried to conviction. . . . Moore v. Dempsey, 261 U. S. 86, 91, 67 L. Ed. 543."
>
> *Voight v. Webb*, 47 F. Supp. 743, 746.

Under our vaunted legal system, no man, however bad his behavior may be convicted of a crime of which he was not charged, proven and found guilty in accordance with due process. *Parr v. United States,* 363 U. S. 370. If the complaint filed in this case against petitioner was not filed by the arresting officer, as is a mandatory requirement under the statute, then no complaint was actually filed against the petitioner and the petitioner was found guilty and convicted for a charge that was never properly made in the court. This is denial of due process under the 14th Amendment to the Constitution. It is settled that if the defendant has not been legally committed and if the trial court erroneously denies the motion to set aside and permits the action to proceed to judgment, the resulting conviction must be reversed. *People v. Elliot,* 54 Cal. 2d 498, 503. When there are procedural errors in the trial of one accused of a crime, it is true that timely objection must be made to the errors or the errors may be waived. *People v. Howard,* 111 Cal. 655. In petitioner's case, however, the objection as to the procedural defect has been relied upon from the beginning of the accusation against him.

The words of a statute are to be interpreted according to their common and ordinary acceptation. *People v. Amden,* 123 Cal. App. 2d Supp. 951, 970.

Paragraph 40306(a) of the California Vehicle Code is certainly plain and unambiguous when it states that "the arresting officer shall file with the Magistrate a complaint stating the offense with which the person is charged." It is true that paragraph 740 of the Penal Code of the State of California states that the complaint may be verified on information and belief, but it also

states that it may be verified on information and belief only "except as otherwise provided by law . . ." Certainly it is otherwise provided by law in paragraph 40306 of the State Vehicle Code. Furthermore, it would seem to be pertinent that said paragraph 40306 is found in the Vehicle Code, which deals with misdemeanors and felonies in connection with vehicular activities; whereas paragraph 740 of the Penal Code of the State of California is concerned generally with public offenses. Specific statutes take precedence over general statutes.

"Since plain meaning of statute must be followed, courts are prohibited from speculating that legislature meant something other than what it said."

Los Angeles County v. Read (1961), 193 Cal. App. 748, 14 Cal. Rptr. 628.

"A general statutory provision is controlled by one that is special, the special being treated as an exception to the general; specific provision relating to a particular subject will govern in respect to that subject as against general provisions, though general provision, standing alone, will be broad enough to include subject to which particular provision relates."

Los Angeles v. Pacific Elec. R. Co. (1959), 168 Cal. App. 2d 224, 335 P. 2d 1042;

Richarson v. San Diego (1961), 193 Cal. App. 2d 648, 14 Cal. Rptr. 494;

People v. Perez (1961), 198 A. C. A. 489, 18 Cal. Rptr. 164.

LIBERAL OR STRICT CONSTRUCTION:

"Defendant in criminal case is entitled to benefit of every reasonable doubt as to true interpretation of words or construction of language in a statute.

People v. Holtzendorff (1960), 177 Cal. App. 2d 788, 2 Cal. Rptr. 676.

ERRONEOUS CONSTRUCTION:

"An erroneous administrative construction does not govern interpretation of statute."

Wallace v. State Personnel Board (1959), 168 Cal. App. 2d 543, 336 P. 2d 223.

SPECIAL AND GENERAL STATUTE:

"Special statute dealing expressly with particular subject controls and takes precedence over general statute covering same subject."

Simpson v. Cranston (1961), 56 Cal. 2d 63, 362 P. 2d 492.

NECESSITY FOR CONSTRUCTION—UNAMBIGUOUS STATUTE:

"If statute is clear, courts should enforce legislative intent as disclosed thereby.:

Efron v. Kalmanovitz (1960), 185 Cal. App. 2d 149, 8 Cal. Rptr. 107.

(2) It is elementary that public officials must themselves obey the law. *Wirin v. Parker*, 48 Cal. 2d 890, 894.

When a statute is passed by the legislature of a state setting out in particularity what shall happen when a vehicular misdemeanor occurs, and making it mandatory that what shall happen must happen with respect to a complaint stating an offense against the person being

charged for the vehicular misdemeanor, and the state and its officers intentionally flaunt the plain wording of the statute, then the person so arrested is being denied the equal protection of the laws and due process under the 14th Amendment. The purpose of the equal protection clause of the 14th Amendment is to secure to every person within the state's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents. *Sunday Lake Iron Company v. Township of Wakefield*, 247 U. S. 352. An actual discrimination arising from the method of administering the law is a potential in creating a denial of equality of rights guaranteed by the law. *Rogers v. State of Alabama*, 192 U. S. 226. A state is not required by the Federal Constitution to provide different sets of procedural criminal statutes for different types of crimes, but where different sets of criminal procedural statutes are provided by a state, it cannot deny the rights to a person allegedly guilty under one statute providing one procedure by complaining against him under a different statute providing a different procedure. *Griffin v. Illinois*, 351 U. S. 12, 100 L. Ed. 891.

A conviction under Section 23101 of the Vehicle Code of the State of California is deemed a conviction *malum in se*. A conviction under a comparable statute in the State of Michigan was so deemed. *People v. Townsend*, 214 Mich. 267. In the State of California, the courts have recognized that the requisite feloneous intent for conviction under Section 23101 of the Vehicle Code is the equivalent of that necessary for a conviction under Section 23102 of the Vehicle Code.

See *People v. Gossman*, 95 Cal. App. 2d 293, holding that a charge under former Section 501 of the Vehicle Code will support a conviction under former Section 502 of the Vehicle Code, those former sections being present Sections 23101 and 23102 of the Vehicle Code respectively. The ordinary misdemeanor prosecution procedure is as set out in Section 740 of the Penal Code of the State of California. But the misdemeanor with which petitioner is charged under Section 23102 of the Vehicle Code is not an ordinary misdemeanor. It is a misdemeanor for which under Section 40302 of the Vehicle Code of the State of California, subparagraph (d) the person arrested shall (must) be taken without unnecessary delay before a Magistrate. Under Section 40306 of the Vehicle Code, when the person is arrested and taken before the Magistrate he is entitled to have the *arresting officer* file with the Magistrate a complaint stating the offense for which he is charged. Such rights are not required by the law for arrests of ordinary misdemeanors under Section 740 of the Penal Code of the State of California. Nowhere else in the Vehicle Code is there a statute permitting the filing of the complaint by anyone other than the arresting officer.

The equal protection clause of the 14th Amendment to the Constitution of the United States applies to a criminal case. *Griffin v. Illinois*, 351 U. S. 12, at pages 16 to 18. J. W. Fletcher was not the arresting officer who arrested the petitioner, either with or without a warrant. He was not a witness to the alleged misdemeanor. He had no personal knowledge of the facts set out in the complaint. He had no information or belief upon which to base his filing of the complaint

against the petitioner. His only knowledge with respect to petitioner's alleged violation was what he gleaned from the arresting police report which to him might or might not have been true. The fact that the complaint may have appeared to have been valid upon its face does not grant the court jurisdiction over the petitioner. *United States v. Langsdale*, 115 F. Supp. 489. *United States Ex Rel. King v. Gokey*, 32 F. 2d 793. *United States v. Baumart*, 179 Fed. 735; *United States v. Wells*, 225 Fed. 320; *United States v. Rurocde*, 220 Fed. 210. In *Wells v. Justice*, 181 Cal. App. 2d 221, at page 225, the California Appellate Court said:

> "The preliminary complaint in a criminal proceeding is merely an allegation in writing, signed by a person *who knows the facts*. . . ."

When a complaint is stated upon information and belief, there is no presumption that the complaint is made on the personal knowledge of the officer complainant. *Giordenello v. United States*, 357 U. S. 460, 486.

> "Thus, the trial court by accepting with approval the fruits of this long chain of Constitutional and Statutory infringements became the consumate force in the denial of due process. When the Trial Court permitted itself under the pressure of a sense of devotion to law enforcement by the State, to become the pinnacle of this pyramid of indignities offensive to the 'sense of justice', it lost jurisdiction and was without authority of law to pronounce a valid judgment and sentence."

Leyia v. Denno, 347 U. S. 556.

Stages of the Proceedings in the State Courts at Which, and the Manner in Which, the Federal Questions Sought to Be Reviewed Were Raised.

The Federal questions of due process and equal protection under the 14th Amendment to the Constitution of the United States were raised by argument of counsel for petitioner on motion to dismiss on March 21, 1962 and March 26, 1962 in the Municipal Court of the Los Angeles Judicial District; and counsel for petitioner's argument and brief before the District Court of Appeal, 2nd Appellate District, State of California upon his petition for Writ of Prohibition before said court, in paragraph XI thereof, which is quoted as follows:

> "That said respondent should be restrained from proceeding with said sentencing for the reason that the complaint herein is void and ineffectual to confer jurisdiction upon respondent court to try your petitioner for the offense charged therein on the following grounds:
>
> "The constitutional guarantee of due process afforded the petitioner by the United States Constitution and the 14th Amendment has been violated by said respondent, Municipal Court, in the following respects:
>
> "1. Section 40302 of the Vehicle Code provides that a person charged with violation of Section 23102(a) shall be taken before a magistrate within the county in which the offense charged is alleged to have been committed and who has jurisdiction of the offense and is nearest and most accessable with respect to the place where the arrest is made.

"2. Section 40306 of the Vehicle Code provides that in the event a person is arrested for a misdemeanor and is taken before a magistrate, the *arresting officer shall file* with the magistrate a complaint stating the offense with which the person is charged (emphasis added).

"3. Section 15 of the Vehicle Code provides that the word 'shall' is mandatory and the word 'may' is permissive.

"4. Where a statute restricts the making of a complaint to certain persons, it may be made by such persons only.

"The unconditional guarantee of equal protection of the laws afforded the petitioner by the United States Constitution and the 14th Amendment has been violated by said respondent court.";

and petitioner raised the federal question in his petitions for Writs of Prohibition and Writs of Habeas Corpus before all of the other courts of the State of California in which said petitions have been filed by counsel for petitioner; but so as not to be unduly repetitive, petitioner has filed herein in the appendix his petition for writ and points and authorities which he filed in the Supreme Court of the State of California for a Writ of Habeas Corpus on September 17, 1962, and has marked said Petitioner's Exhibit 2 in Appendix.

We pray for a certiorari to the Supreme Court of the State of California.

Respectfully submitted.

JOHN N. FROLICH, and
LINUS R. FIKE,
Attorneys for Petitioner.

Exhibit 1.

August 31, 1962

Appeal by People from order dismissing the complaint of the Municipal Court of the South Gate Judicial District, F. W. Bunnett, Judge. Reversed with directions.

CITY ATTORNEY'S SUMMARY OF MATERIAL FACTS BEFORE THE COURT IN THE STATEMENT ON APPEAL.

The pertinent facts in this case are contained in the court's Opinion and Judgment.

OPINION AND JUDGMENT

(Prepared by Court)

This is an appeal by the People. There is no dispute regarding the facts. The trial court dismissed the complaint for the sole reason that the complaint was not signed and filed by the arresting officer but by the assistant chief of police of South Gate.

The complaint charged a violation of Sec. 23102a V.C. (driving while under the influence of intoxicating liquor). Sec. 40302 V.C. provides that for this offense the defendant shall be taken before a magistrate and Sec. 40306a V.C. provides: "Whenever a person is arrested for a misdemeanor and is taken before a magistrate, the arresting officer shall file with the magistrate a complaint. . . ." Because of this section, and the failure of the arresting officer to sign the complaint, the trial judge dismissed the complaint.

This was error for several reasons.

First: In this case a magistrate (the arrest having been made about 2:35 A.M.) was not available

but, pursuant to Sec. 40307 V.C., the defendant was released on bail. Thus literally Sec. 40306 V.C. relied on by defendant-respondent, was inapplicable since it applies only when defendant is taken before a magistrate. While this is a technical answer, so is the claim asserted by defendant-respondent.

Second: V.C. Sec. 40306 requires the arresting officer to *file* the complaint but does not require him to *sign* it. The obvious purpose of the section is to place upon the arresting officer the primary responsibility to see that a complaint is filed. Compare *People v. Biffle* (1950) our CR A 2596 where a somewhat comparable provision in H. & S. Code Sec. 26604 was construed not as an exclusive mode but "to impose on someone in authority the burden of attending to such criminal actions, or prosecutions." We hold that the arresting officer may file the complaint personally or he may activate the machinery which causes the complaint to be filed. It is an old maxim of jurisprudence that "Qui facit per alium facit per se." In either case the purpose of the section has been accomplished when the complaint is filed. In the case at bar the complaint was filed the day of the defendant's arrest and it complies with Penal Code Sec. 740 as to its contents.

Third: However, assuming, without deciding, that the arresting officer was wrong in not signing or filing a complaint, it does not follow that the complaint should be dismissed. The section is not a constitutional re-

quirement nor is it substantive, but only statutory and procedural. There has been no showing of prejudice. The same legislative body that created the requirement may, and has, stated the consequences of failing to follow it. Sec. 960 P.C. provides that "no accusatory pleading is insufficient" because of a defect in form absent "prejudice". The legislature has also told appellate courts in Sec. 1258 P.C. that we must disregard "technical errors or defects". The principle announced in *People v. Washington* (1962), 204 A.C.A. 234, applies here. At P. 237 the court said: "Moreover, failure to impose sentence within the time specified by Section 1191 of the Penal Code is clearly an error of procedure and under California Constitution Article VI, Section 4½, the judgment may not be reversed unless the error complained of has resulted in a miscarriage of justice. (*People v. Zuvela*, 191 Cal. 223 . . .; *People v. Williams*, 24 Cal. 2d 848 . . .)"

Fourth: Before closing this memorandum we should make reference to Sec. 40300 V.C., although not urged by the respondent in this case. That section (which has been strongly relied upon by defendants in other cases) reads as follows: "The provisions of this chapter shall govern all peace officers in making arrests for violations of this code without a warrant for offenses committed in their presence, but the procedure prescribed herein shall not otherwise be exclusive of any other method prescribed by law for the arrest and prosecution of a person for an offense of like grade."

It may well be that the words "shall not otherwise be exclusive" imply that to the extent stated in the first part of the sentence the procedure of the Vehicle Code is exclusive. Such first part however relates only to "arrests" and not to subsequent procedures. We should not assume that the reference to "arrests" alone in the first part was inadvertent because the Legislature in the latter part of the same sentence referred to both "arrest and prosecution" and hence at the moment of enactment was mindful of the difference. Furthermore there is no reason to give a strained construction to Sec. 40300 V.C. in order to reach a technical result which is not meritorious. Thus if there is an implication that the procedure is exclusive, it is exclusive only as to the arrest and not to anything subsequent thereto.

The judgment of dismissal is reversed with directions to try the case.

BY THE COURT

SWAIN
Presiding Judge

SMITH
Judge

Exhibit 2.

In the Supreme Court of the State of California.

In the Matter of the Application of Ramon Novarro For a Writ of Habeas Corpus.

Petition for Writ and Points and Authorities.

Received Sep. 17 1962 Office of the Clerk, Supreme Court, Los Angeles.

John N. Frolich, 411 West 7th St. L. A. 14, Cal.

To the Honorable Justices of the Supreme Court of the State of California:

THE PETITION OF JOHN N. FROLICH respectfully shows: that RAMON NOVARRO is imprisoned, detained, confined and restrained of his liberty by the Sheriff of Los Angeles County PETER PITCHESS, at County Jail in the County of Los Angeles, State of California.

That your petitioner is the attorney of record of the above named prisoner and is personally authorized by said prisoner to make this application in his behalf.

That said imprisonment, detention confinement and restraint are illegal; and that the illegality thereof consists in this, to wit:

Prisoner was charged with violation of V.C. #23102 on February 20th, 1962, on a complaint filed on information and belief, in the Municipal Court, Los Angeles Judicial District, County of Los Angeles, State of California, No. 56957. Said complaint did not give jurisdiction to the Municipal Court in that it was void because it was not filed by the arresting officers as required by V.C. #40306 of the State of California

Prisoner was sentenced to fifteen (15) days in county jail plus $250.00 fine, on June 26, 1962.

A Petition for Hearing of a denial of a Writ of Prohibition by the District Court of Appeal, Second District, was denied by the Supreme Court of the State of California on July 25, 1962 (No. 26535); that said Court had jurisdiction of the matter and an appeal from the sentence was not filed until July 26, 1962; that said appeal was dismissed by the Appellate Department of the Superior Court of the State of California for Los Angeles County, on its own motion, on August 9, 1962, on the ground that it lacked jurisdiction since no appeal was filed while the matter was before the Supreme Court of the State of California.

An appeal was dismissed on August 9th, 1962, and the remittitur was sent down on August 21, 1962. Prisoner has been denied substantive due process under the Fourteenth Amendment to the Constitution of the United States.

That bail has been fixed by Los Angeles Municipal Court or Judge thereof and that the offense is a bailable offense.

That prisoner was arrested on the 20th day of February 1962, and has been in custody continuously since said time.

That said prisoner, RAMON NOVARRO, is not held by virtue of any complaint, indictment, presentment, warrant, or quarantine law, rule, regulation, arrest or order, except as above specifically set out. That no other application for a Writ of Habeas Corpus has been made by or in behalf of said prisoner in regard to said restraint except as follows:

That Petition for Writ of Habeas Corpus was denied by the Superior Court of the State of California, for the County of Los Angeles on August 23rd, 1962. That Petition for Writ of Habeas Corpus was denied by the District Court of Appeal, Second District, of the State of California, on September 13, 1962.

Wherefore, your petitioner prays that a Writ of Habeas Corpus may be granted, directed to the said PETER PITCHESS, Sheriff of Los Angeles County, commanding him to have the said prisoner, RAMON NOVARRO, before said Court, at a time and place therein to be specified, to do and receive what shall then and there be considered by said Court, concerning the person so restrained together with the time and cause of his detention, and said Writ; and that he may be restored to his liberty.

Dated: September, 1962.

JOHN N. FROLICH
JOHN N. FROLICH

State of California, County of Los Angeles—ss.

I, the undersigned, say: I am the petitioner named in the foregoing petition; that I have read the said petition and know the contents thereof, and that the same is true of my own knowledge, except as to the matters which are herein stated on my information or belief, and as to those matters that I believe it to be true.

I certify under penalty of perjury, that the foregoing is true and correct.

Executed on September, 1962 at Los Angeles, California.

JOHN N. FROLICH

Points and Authorities.

I

Writ of Habeas Corpus May Issue When Process Is defective, so as to render such process void; or where a party has been committed on a criminal charge without reasonable or probable cause.

Penal Code, Sec. 1487 (3), (7).

"The purpose of a Writ of Habeas Corpus is to test the validity of the process upon which a person is restrained and the jurisdiction of the court issuing such process. (Exparte Long. 114 C 155)."

In Re Jacinte, 8 CA 2 275, 276.

II

Fundamental Constitutional Rights May Be Tested on Habeas Corpus.

"The writ of habeas corpus may not be used as a substitute for an appeal, but if fundamental constitutional rights of the petitioner have been violated, the writ will lie. (*People v. Adamson*, 34 C2 320; *In Re McCoy*, 32 C2 76, 76, 78; *In Re Wallace*, 24 C2 933, 938; *In Re Bell*, 19 C2 488, 494, 507.)"

In Re James, 38 C2 302, 309-310.

III

A Complaint Made on Information and Belief May Be Tested on Habeas Corpus.

". . . The complaint against petitioner by which the Proceeding under which he is held in custody by the sheriff of Sonoma County was instituted, does not purport to have been made on informa-

tion and belief, and was sufficient to authorize issuance of the warrant of arrest. Habeas Corpus will not lie to inquire into the question whether the complainant had *actual* knowledge of the matter as to which he swore positively in such a complaint."

Matter of Application of Vaughan, 169 C 483, 484. (Emphasis by the court.)

IV

No Showing of Prejudice Is Required.

"When the statute is violated, no showing of actual prejudice is required. Prejudice must be presumed. Obviously, if actual prejudice must be shown, the guarantee would become meaningless."

People v. Elliot, 54 C2 498, 505.

V

The Defendant Was Denied Substantive Due Process By the Failure to Follow the Rules of Procedure Established by the Legislation.

The defendant is entitled, under the due process of law clause of the Fourteenth Amendment to the United States Constitution, to be tried by the established rules of procedure determined by the Legislature. *People v. Horiuchi*, 114 CA 415; *People v. Gilbert*, 25 C2 422.

The same rule applies under the due process clause of the *California Constitution, Art. I, 13.*

It is essential that guilt or innocence be established by orderly legal procedure in the administration of justice. *People v. O'Bryan*, 165 C 55.

As stated in *Garner v. Louisiana,* 7 Led 2d 207 at 214:

> ". . . it is as much a denial of due process to send an accused to prison following conviction for a charge that was never made as it is to convict him upon a charge for which there is no evidence to support that conviction."

and recently the Court said, in *Parr v. US* 363 US 370, 304; 4 Led 1277, 1292:

> ". . . Under our vaunted legal system, no man, however, bad his behavior, may be convicted, proven and found guilty in accordant with due process."

(Additional Points and Authorities submitted and filed with Writ of Prohibition, No. 26535, and now on file in the above entitled court.

Dated: September 17, 1962.

Respectfully submitted,

JOHN N. FROLICH

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IN THE

Supreme Court of the United States

October Term, 1962

No. .....

RAMON NOVARRO,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Respondent.

Brief of Respondent in Opposition to Granting Writ of Certiorari.

Statement of the Case.

Petitioner was convicted in the Municipal Court of Los Angeles Judicial District, State of California, of violation of Section 23102 of the California Vehicle Code, driving while under the influence of intoxicating liquor. Petitioner attempted to appeal from the judgment of conviction but failed to file his Notice of Appeal within the jurisdictional time allowed.

Petitioner then sought a writ of habeas corpus in the California Supreme Court which was denied without opinion by said Court on October 10, 1962:

> "Crim. 7216—In re Novarro on Habeas Corpus. Petition for Writ of Habeas Corpus denied." (58 A. C. No. 16, p. 2 of Minutes.)

Petitioner now seeks certiorari in this honorable court on the grounds that he was denied the due process and equal protection afforded by the 14th Amendment.

I.

The Supreme Court of the United States Should Not Grant Certiorari Where Petitioner Has Not Exhausted His State Remedy of Appeal.

California follows the federal rule as set forth in *Brown v. Allen*, 344 U. S. 443, 97 L. Ed. 469, that habeas corpus cannot serve as a substitute for an appeal, and, in absence of special circumstances constituting an excuse for failure to employ that remedy, the writ will not lie where the claimed errors could have been, but were not, raised upon a timely appeal from a judgment of conviction.

In re Connor, 16 Cal. 2d 701, 705, 108 P. 2d 10;

In re McInturff, 37 Cal. 2d 876, 880, 236 P. 2d 574;

In re Dixon, 41 Cal. 2d 756, 759, 264 P. 2d 513.

Rule 2, Rules on Appeal from Municipal Courts and Justice Courts in Criminal Cases, 56 Cal. 2d 10 (App. A) requires that a written notice of appeal be filed in the court where the judgment or order appealed from is rendered within ten days after the rendition of such judgment or order. In California the rule is well settled that the time requirements for the taking of an appeal are mandatory and the appellate courts are without jurisdiction to consider an appeal which has been

taken subsequent to the expiration of the statutory period.

People v. Spencer, 193 Cal. App. 2d 13, 16, 13 Cal. Rptr. 881;

People v. Slobodion, 30 Cal. 2d 362, 365, 181 P. 2d 868;

People v. Lewis, 219 Cal. 410, 413, 27 P. 2d 73.

Petitioner admits that the remedy of a timely appeal from the judgment of conviction of the trial court was available to him, and that he, though represented by counsel, failed utterly to take the necessary steps to perfect such appeal.

II.

The Supreme Court of the United States Should Not Take Jurisdiction to Review an Order Where No Opinion Was Delivered by the Highest State Court.

As the record certified to this Court reveals, the California Supreme Court denied the petition for habeas corpus on October 10, 1962, and no opinion was delivered by said court.

It is not sufficient to give the United States Supreme Court jurisdiction that a federal question might have been raised or might have been decided and was involved in the case; it must appear, either in direct terms or by necessary intendment; that it was in fact brought to the notice of the court and decided by it.

Bolling v. Lersner, 91 U. S. 594, 23 L. Ed. 366;

McQuade v. Trenton, 172 U. S. 636, 43 L. Ed. 581;

Wilson v. Cook, 327 U. S. 474, 90 L. Ed. 793.

In *Stembridge v. State of Georgia,* 343 U. S. 541, 96 L. Ed. 1130, it was held that, where the highest court of the state delivers no opinion and it appears that the judgment might have rested upon a non-federal ground, the United States Supreme Court will not take jurisdiction to review the judgment.

Thus it is obvious that because the petitioner failed to take a timely appeal, the decision of the California Supreme Court denying habeas corpus without opinion could have rested upon adequate state grounds, and therefore, this honorable court under the rule of *Stembridge v. Georgia, supra,* should decline to take jurisdiction of this matter.

III.

In That the State Statute Involves a Question of Local Pleading and Practice, and Such Question Has Been Adjudicated by the State Courts, and Enforcement of the State Statute as Interpreted by the State Courts Does Not Result in a Denial of Due Process, No Federal Question of Substance Is Here Presented.

As applied to a criminal trial, denial of due process is the failure to observe that fundamental fairness is essential to the very concept of justice, but due process of law is satisfied when one, present in court, is convicted of crime after having been fairly advised of the charges against him and after a fair trial in accordance with constitutional procedural safeguards.

Lisenba v. California, 314 U. S. 219, 86 L. Ed. 166;

Frisbie v. Collins, 342 U. S. 519, 96 L. Ed. 541.

Section 40306, California Vehicle Code, the statute in question, provides:

> "(a) Whenever a person is arrested for a misdemeanor and is taken before a magistrate, the arresting officer shall file with the magistrate a complaint stating the offense with which the person is charged.
>
> (b) The person taken before a magistrate shall be entitled to at least five days continuance of his case in which to plead and prepare for trial and the person shall not be required to plead or be tried within the five days unless he waives such time in writing or in open court.
>
> (c) The person taken before a magistrate shall thereupon be released from custody upon his own recognizance or upon such bail as the magistrate may fix." [Statutes 1951, Chap. 3, p. 1776.]

On August 31, 1962, the Appellate Department of the Superior Court for the County of Los Angeles, in *People v. Maggiora*, CR. A. 5111 (App. B), decided the very point presented by petitioner. It was there held that the arresting officer under Section 40306, California Vehicle Code, was required to file, not to sign, the complaint only when such person was actually taken before the magistrate but that when a magistrate was not available, the arresting officer need not comply with the section but may rather, follow the procedure set forth in Section 40307, California Vehicle Code, which provides:

> "(a) When an arresting officer attempts to take a person arrested for a misdemeanor viola-

> tion of this code before a magistrate and the magistrate or person authorized to act for him is not available, the arresting officer shall take the person arrested before the clerk of the magistrate or the officer in charge of the most accessible county jail, city jail, or other place of detention within the county, who shall admit him to bail in accordance with a schedule, fixed as provided in Section 1269(b) of the Penal Code." [Statutes 1959, Chap. 3, p. 1776.]

The court also held that, assuming for the sake of argument the arresting officer was wrong in not signing or filing the complaint,

> "it does not follow that the complaint should be dismissed. The section is not a constitutional requirement nor is it substantive, but only statutory and procedural. There has been no showing of prejudice." (*People v. Maggiora, supra.*)

Thus, the California courts have held that petitioner's interpretation of the statute involved is incorrect, that is, it must be shown that a magistrate was available at the time of arrest and, if available, that petitioner was actually taken before a magistrate.

It is the peculiar province and privilege of the state courts to construe their own statutes. The power delegated to the United States Supreme Court is for restraint of unconstitutional legislation by the states and not for the correction of alleged errors committed by their judiciary.

Hooker v. Los Angeles, 188 U. S. 314, 47 L. Ed. 487;

McNulty v. California, 149 U. S. 645, 37 L. Ed. 882.

Because of petitioner's failure to perfect an appeal, there is presently no record of the proceedings pertaining to the arrest, release on bail and subsequent trial of petitioner now before this court other than the unsubstantiated statements of John N. Frolich, counsel for petitioner. Assuming, however, for argument, that such unilateral representations are correct, respondent submits that petitioner's own accusations do nothing more than present this Honorable Court with a non-federal question. Petitioner concedes that a complaint was in fact filed by one J. W. Fletcher of the Los Angeles Police Department and that such complaint was verified upon the information and belief of said J. W. Fletcher. Petitioner also sets out the provisions of Section 740 of the California Penal Code (App. C), which requires that all public offenses triable in the inferior courts be prosecuted by written complaint under oath, subscribed by the complaining party, but that such verification may be upon information and belief. The obvious purpose and necessity of this section is to insure that one accused of crime will be fully and fairly put on notice of the charge against him and that such charge is laid against him by a person who is conversant with the facts of the crime or arrest, or who is in a position to represent that he has information and belief of the existence of such facts and who will stand responsible to the accused and to the courts if they prove to be non-existent.

Petitioner nowhere alleges, and respondent submits, that he is not in a position to allege that he was not sufficiently apprized of the charge against him or that his subsequent release on bail deprived him of some

right, or that his subsequent trial was short of being full and fair or resulted in prejudice to him in any way.

It has repeatedly been held, both in the California courts and the federal courts, that no accusatory pleading is insufficient or judgment reversible by reason of any defect or error as to any matter of pleading or procedure where such defect or error does not prejudice a substantial right of the defendant.

California Penal Code Section 960 (App. D); California Constitution, Article VI, Sec. 4½ (App. E).

A defective accusatory pleading, even one that is so defective that a demurrer should have been sustained thereto, will not result in a reversal of conviction unless a substantial right of the defendant, on the merits, is adversely affected.

People v. Schoeller, 96 Cal. App. 2d 61, 214 P. 2d 565;

People v. Beesly, 119 Cal. App. 82, 6 P. 2d 114;

People v. Mitchell, 40 Cal. App. 2d 204, 104 P. 2d 545.

The federal courts hold forth the propositions that the question of whether or not the state constitution was complied with in the proceedings on a criminal trial is not a federal question,

Baldwin v. Kansas, 129 U. S. 52, 32 L. Ed. 640;

Brooks v. Missouri, 124 U. S. 394, 31 L. Ed. 454.

and a ruling of a state court involving nothing more than a decision of a question of local pleading and practice is not open to review in the Federal Supreme Court.

Washington v. Miller, 235 U. S. 422, 59 L. ed. 295.

Conclusion.

It is urged that the petition for writ of certiorari to the Supreme Court of California be denied.

Respectfully submitted,

ROGER ARNEBERGH,
City Attorney,

PHILIP E. GREY,
Assistant City Attorney,

WM. E. DORAN,
Deputy City Attorney,

CHARLES W. SULLIVAN,
Deputy City Attorney,

Attorneys for Respondent.

APPENDIX A.

Adopted by the Judicial Council of the State of California. Effective September 15, 1961. (Rule 2 of Rules on Appeal from Municipal Courts and Inferior Courts in Criminal Cases)

Appeal—How Taken. An appeal to the Superior Court of the county in which such inferior court is located is taken by filing written notice of appeal in the court wherein the judgment or order appealed from is rendered, within ten days after the rendition of such judgment or order, except that an appeal from an order denying a motion for a new trial in cases where the defendant is committed before final judgment for sexual psychopathy, insanity, or narcotics addiction may be taken within ten days after the making of such order or the defendant's commitment, whichever is later. Such written notice of appeal shall be filed with the clerk of said court, or, if there be no clerk, with the magistrate therein presiding. The date of such filing shall be the effective date of the taking of such appeal. If such notice of appeal is not filed as aforesaid within the time required, such appeal shall be void and of no effect.

APPENDIX B.

People v. Irene Ariadne Maggiora, CR A 5111.
August 31, 1962

Appeal by People from order dismissing the complaint of the Municipal Court of the South Gate Judicial District, F. W. Bunnett, Judge. Reversed with directions.

City Attorney's Summary of Material Facts Before the Court in the Statement on Appeal.

The pertinent facts in this case are contained in the court's Opinion and Judgment.

OPINION AND JUDGMENT
(Prepared by Court)

This is an appeal by the People. There is no dispute regarding the facts. The trial court dismissed the complaint for the sole reason that the complaint was not signed and filed by the arresting officer but by the assistant chief of police of South Gate.

The complaint charged a violation of Sec. 23102a-V.C. (driving while under the influence of intoxicating liquor). Sec. 40302 V.C. provides that for this offense the defendant shall be taken before a magistrate and Sec. 40306a V.C. provides: "Whenever a person is arrested for a misdemeanor and is taken before a magistrate, the arresting officer shall file with the magistrate a complaint. . . ." Because of this section, and the failure of the arresting officer to sign the complaint, the trial judge dismissed the complaint.

This was error for several reasons.

First: In this case a magistrate (the arrest having been made about 2:35 A.M.) was not available but, pursuant to Sec. 40307 V.C., the defendant was released on bail. Thus literally Sec. 40306 V.C. relied on by defendant-respondent, was inapplicable since it applies only when defendant is taken before a magistrate. While this is a technical answer, so is the claim asserted by defendant-respondent.

Second: V.C. Sec. 40306 requires the arresting officer to *file* the complaint but does not require him to *sign* it. The obvious purpose of the section is to place upon the arresting officer the primary responsibility to see that a complaint is filed. Compare *People v. Biffle* (1950) our CR A 2596 where a somewhat comparable provision in H. & S. Code Sec. 26604 was construed not as an exclusive mode but "to impose on someone in authority the burden of attending to such criminal actions, or prosecutions." We hold that the arresting officer may file the complaint personally or he may activate the machinery which causes the complaint to be filed. It is an old maxim of jurisprudence that "Qui facit per alium facit per se." In either case the purpose of the section has been accomplished when the complaint is filed. In the case at bar the complaint was filed the day of the defendant's arrest and it complies with Penal Code Sec. 740as to its contents.

Third: However, assuming, without deciding, that the arresting officer was wrong in not signing or filing a complaint, it does not follow that the complaint should be dismissed. The section is not a constitutional requirement nor is it substantive, but only statutory and procedural. There has been no showing of prejudice.

The same legislative body that created the requirement may, and has, stated the consequences of failing to follow it. Sec. 960 P.C. provides that "no accusatory pleading is insufficient" because of a defect in form absent "prejudice". The legislature has also told appellate courts in Sec. 1258 P.C. that we must disregard "technical errors or defects". The principle announced in *People v. Washington* (1962), 204 A.C.A. 234, applies here. At P. 237 the court said: "Moreover, failure to impose sentence within the time specified by Section 1191 of the Penal Code is clearly an error of procedure and under California Constitution Article VI, Section 4½, the judgment may not be reversed unless the error complained of has resulted in a miscarriage of justice. (*People v. Zuvela,* 191 Cal. 223 . . .; *People v. Williams,* 24 Cal. 2d 848 . . .)"

Fourth: Before closing this memorandum we should make reference to Sec. 40300 V.C., although not urged by the respondent in this case. That section (which has been strongly relied upon by defendants in other cases) reads as follows: "The provisions of this chapter shall govern all peace officers in making arrests for violations of this code without a warrant for offenses committed in their presence, but the procedure prescribed herein shall not otherwise be exclusive of any other method prescribed by law for the arrest and prosecution of a person for an offense of like grade."

It may well be that the words "shall not otherwise be exclusive" imply that to the extent stated in the first part of the sentence the procedure of the Vehicle Code is exclusive. Such first part however relates only to "arrests" and not to subsequent procedures. We

should not assume that the reference to "arrests" alone in the first part was inadvertent because the Legislature in the latter part of the same sentence referred to both "arrest and prosecution" and hence at the moment of enactment was mindful of the difference. Furthermore there is no reason to give a strained construction to Sec. 40300 V.C. in order to reach a technical result which is not meritorious. Thus if there is an implication that the procedure is exclusive, it is exclusive only as to the arrest and not to anything subsequent thereto.

The judgment of dismissal is reversed with directions to try the case.

By the Court
SWAIN, Presiding Judge
SMITH, Judge

APPENDIX C.

Added by Stats. 1951, c. 1674, p. 3831 (Penal Code Section 740)

[Public offenses triable in inferior courts: Prosecution by written complaint under oath: Verification on information and belief.] Except as otherwise provided by law, all public offenses triable in the inferior courts must be prosecuted by written complaint under oath and subscribed by the complaint. Such complaint may be verified on information and belief.

APPENDIX D.

Amended by Stats. 1951, c. 1674, p. 3838 (Penal Code Section 960)

[Same: Defects or imperfections in matter of form not prejudicial to substantial right of defendant.] No accusatory pleading is insufficient, nor can the trial, judgment, or other proceeding thereon be affected by reason of any defect or imperfection in matter of form which does not prejudice a substantial right of the defendant upon the merits.

APPENDIX E.

Added Oct. 10, 1911; amended Nov. 3, 1914 (California Constitution, Article VI, Sec. 4½)

Reversal for error resulting in miscarriage of justice. No judgment shall be set aside, or new trial granted, in any case, on the ground of misdirection of the jury, or of the improper admission or rejection of evidence, or for any error as to any matter of pleading, or for any error as to any matter of procedure, unless, after an examination of the entire cause, including the evidence, the court shall be of the opinion that the error complained of has resulted in a miscarriage of justice.